

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHARLES A. WHITTIER, *et al.*,
Plaintiffs,

v.

OCWEN LOAN SERVICING, LLC,
et al.,
Defendants.

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CIVIL ACTION NO. H-12-3095

MEMORANDUM AND ORDER

By Memorandum and Order [Doc. # 65] entered September 25, 2013, the Court granted summary judgment in Defendants' favor. The Court held that Defendant Deutsche Bank National Trust Company ("Deutsche Bank") was entitled to recover its costs and expenses, including reasonable attorneys' fees in an amount to be determined later. The Court directed Deutsche Bank to file its statement of costs and attorneys' fees, with full supporting documentation, by October 11, 2013, and directed Plaintiffs Charles A. Whittier and Yvette E. Whittier to file any objections or other response by October 25, 2013.

On October 11, 2013, Defendants filed a timely Bill of Costs [Doc. # 67] and Application for Attorneys' Fees [Doc. # 68]. Defendants seek to recover taxable costs in the amount of \$1,996.75, and attorneys' fees in the amount of \$47,028.90. Plaintiffs neither filed a response by October 25, 2013, nor requested an extension of

the deadline. Pursuant to the Local Rules of the United States District Court for the Southern District of Texas, failure to respond to a motion is taken as a representation of no opposition. *See* S.D. TEX. R. 7.3, 7.4.

The Court has reviewed the requested costs and finds them to be properly taxable. Defendants removed the case from state court and, therefore, incurred the \$350.00 filing fee. Defendants properly support their request for \$1,646.75 incurred in connection with deposing Plaintiffs. As a result, the Court awards taxable costs in the amount of \$1,996.75.¹

The Court has also reviewed Defendants' request for attorneys' fees pursuant to *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). Having considered the *Johnson* factors, the Court finds \$47,028.90 to be reasonable. Defendants seek to recover for 204.9 hours of billable time, at an average hourly rate of approximately \$230.00 – below the customary fee in this federal district. The case involved several discovery disputes and multiple dispositive motions on which Defendants were successful. All the claims asserted by Plaintiffs and the counterclaims asserted by Defendants were inextricably related to Defendants' attempt to exercise their rights under the Note and Deed of Trust. Based on its consideration

¹ The Court notes that Defendants did not request recovery of taxable costs incurred in connection with making copies.

of the *Johnson* factors, and on Plaintiffs' failure to oppose the requested amount, the Court concludes that Defendants are entitled to recover their reasonable attorneys' fees in the amount of \$47,028.90.

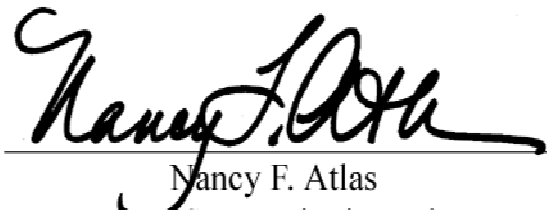
Based on the foregoing, it is hereby

ORDERED that Defendants are awarded taxable costs in the amount of **\$1,996.75**. It is further

ORDERED that Defendants' Application for Attorneys' Fees [Doc. # 68] is **GRANTED** and Defendants are awarded reasonable and necessary attorneys' fees in the amount of **\$47,028.90**.

These amounts are to be included in the Court's Final Judgment [Doc. # 66].

SIGNED at Houston, Texas, this 28th day of **October, 2013**.


Nancy F. Atlas
United States District Judge